

BRUCE R. BERRINGER

IBLA 82-68

Decided December 4, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 37529 through I MC 37538.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequences must be borne by the claimant.

APPEARANCES: Bruce R. Berringer, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bruce R. Berringer appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated October 9, 1981, which rejected his evidence of annual assessment work for 1981 and declared the unpatented Hi Noon Nos. 1 and 2, Spam, Audubon, '1500,' Man Upstairs Nos. 1, 2, and 3, Doris L., and Nita P. lode mining claims, I MC 37529 through I MC 37538, abandoned and void because that evidence of annual assessment work had not been filed for calendar year 1980 on or before December 30, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant states that he had mailed the instrument describing the assessment work for 1980 in September of that year. With his appeal is a letter from William C. Bostrum, President, and Robert M. Barsness, Vice-President, H. J. Burns Co., Spokane, Washington, stating that Berringer had made copies of the 1980 proof of labor on the company's copying machine, and that the envelope containing the copies of the proof of labor was placed in his company's outgoing mail and delivered to the Terminal Annex Post Office in Spokane, on or about September 14, 1980.

[1] Section 314 of FLPMA, supra, and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work for each year be filed in the proper BLM office on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although the evidence indicates that the document may have been mailed as claimed, the regulations define "file" to mean being received and date stamped by the proper BLM office. 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the lack of delivery of the envelope containing the evidence of assessment work to BLM was caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra; James E. Yates, supra. Filing is accomplished only when a document is delivered and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Appellant should confer with BLM about the possibility of relocating his claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

